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Historical background

1. Before looking at specific features of the Grand Duchy of Luxembourg, it might be useful to give a brief account of the country's history. The Grand Duchy has been a State for over 1,000 years and is situated at the heart of Europe, bordered by France, Belgium and Germany.

2. The passage of the Celts and presence of the Romans left lasting marks on its present territory, but the history of the Grand Duchy as it is today began in the year 963. It was then that Sigfried, count of Ardennes and founder of the House of Luxembourg, built a castle where the country's present capital city stands. A town and later a famous fortress, coveted for its strategic position, grew up around this castle, which was situated at the junction of two major Roman roads.

3. The House of Luxembourg was destined to become great. By the end of the Middle Ages, it had produced four emperors of Germany, four kings of Bohemia, one king of Hungary and a number of prince electors. This great period, which came to an end in the fifteenth century, is evoked by the names of Henry VII, John the Blind, Wenceslas, Charles IV and Sigismund. A long period of foreign domination which ended only in the nineteenth century then began for Luxembourg. The fortress of Luxembourg became an unending source of sanguinary struggles for its possession waged by the Burgundians, the Spanish, French, Austrians and Prussians. It was besieged and sacked more than 20 times in the course of four centuries.

4. In 1815, a period of national independence finally commenced for Luxembourg. The Congress of Vienna resolved the country's destiny by ruling that the former Duchy of Luxembourg would be raised to a Grand Duchy and given to the King of the Netherlands. The Grand Duchy was thus joined in personal union with the Netherlands, under the same sovereign (King and Grand Duke), until 1890. This period marked the beginning of a new era during which Luxembourg's political independence vis-à-vis other countries was strengthened, a national consciousness was awakened and a democratic regime was developed on the domestic front.

5. One of the most important dates in the history of Luxembourg is the Treaty of London of 11 May 1867. The Treaty confirmed the territorial integrity and political independence of the Grand Duchy, both of which had already been guaranteed by the Treaty of London of 1839, but it also declared Luxembourg to be permanently neutral and placed its neutrality under the aegis of the great Powers.

6. On the death of William III, King of the Netherlands and Grand Duke of Luxembourg in 1890, the crown of the Grand Duchy passed to the senior branch of the House of Nassau (Nassau-Weilburg): since then, Luxembourg has had its own dynasty. The present sovereign, the Grand Duke Jean, succeeded his mother, the Grand Duchess Charlotte, in 1964, when she abdicated in his favour after a reign that lasted 45 years.

7. Economic progress went hand in hand with political evolution, interrupted, however, by the Second World War, when, despite its neutral status, the Grand Duchy was occupied, as it had been in 1914, by German troops. The country was liberated by the Allied forces in 1944-1945.

8. In 1948, Luxembourg abandoned its neutral status and resolutely adopted an active policy of cooperation and integration in the European and international spheres by joining a number of regional and international economic, political and military organizations. Luxembourg is a founder member of the United Nations, the European Economic Community, the North Atlantic Treaty Organization (NATO) and the Western European Union (WEU), to name but a few.

I. LAND AND PEOPLE

9. Since the Treaty of London of 19 April 1839, the Grand Duchy of Luxembourg has had an area of 2,586 sq. km. Bounded by Germany to the east, Belgium to the west and France to the south, the country's territory is divided administratively into 126 communes that form 3 districts and 12 cantons.

10. On 1 January 1994, the total population of Luxembourg was 400,900, of which 124,500 (31.1 per cent) were foreigners, compared with 276,400 (68.9 per cent) nationals. Nationality is acquired by birth, according to the theory of jus sanguinis, by choice, when a non-national has family ties in the Grand Duchy, or by naturalization, providing that a number of conditions have been met.

11. One final piece of information: Luxembourg has three administrative languages - Luxemburgish, French and German. While Luxemburgish remains the principal language among nationals, French and, to a lesser degree, German predominate in all written administrative procedures.

II. GENERAL POLITICAL STRUCTURE

A. The State

12. The present Constitution governing the political structure of the country is the culmination of a process that began on 12 October 1841, with the entry into force of the first fundamental law. This was replaced by the Constitution of 23 June 1848, which in turn gave way to a third Constitution on 17 October 1868: and it remained unchanged until the end of the First World War.

13. Since 1919, a number of fundamental revisions (1919, 1948, 1956, 1972, 1979, 1983, 1988 and 1989) have enabled Luxembourg to develop a fundamental law establishing the foundations of a modern State. Henceforward, the legislative, executive and judicial branches would operate independently, as part of a representative democracy in the form of a constitutional monarchy.

1. The executive power

(a) The Grand Duke

14. The Grand Duke is the Head of State. Together with the Government, he forms the constitutional organ of the executive power. The specific features of his juridical status include the constitutionality of his authority, the inviolability of his person, his immunity from responsibility and special provisions relating to patrimonial rights and the civil list. The Grand Duke represents the country in the exercise of a great many of the functions of sovereignty. He has no authority other than that formally vested in him by the Constitution and the specific legislation adopted in accordance with the Constitution. The Constitution places the Head of State above and beyond political contingencies and thereby guarantees his impartiality.

15. The inviolability of the Grand Duke means that he may be neither accused nor brought to court by anyone, that he is not amenable to any jurisdiction and that he cannot be asked to account for his actions. Inviolability implies complete immunity from responsibility on the part of the Grand Duke; this immunity is general and absolute, both from the criminal and from the political points of view. The Grand Duke's political immunity has as its counterpart ministerial responsibility: any measure taken by the Grand Duke in the exercise of his political authority must be countersigned by a member of the Government, who assumes full responsibility for the measure. The Constitution sets out the prerogatives of the Grand Duke in the provisions relating, inter alia, to the exercise of executive power, regalities, international functions and participation in the legislative power.

16. The exercise of the executive power per se includes the implementation of legislation and judicial decisions, the direction of the public administration and the supreme command of the armed forces. The Grand Duke issues the regulations and decrees required to implement legislation and may never suspend legislation or leave it in abeyance. The courts monitor the legality of regulations and decrees. The functions of the executive power also include the overall direction of the public administration - that is to say, the power of the Grand Duke to set up and monitor administrative services and to appoint individuals to civilian and military posts. To enable the Grand Duke to maintain law and order and safeguard national security, the Constitution entrusts him with command of the armed forces. Luxembourg's security forces comprise the army per se, the gendarmerie and the police.

17. The Constitution also confers upon the Grand Duke the right to grant pardon, meaning the right to remit or reduce the sentences handed down by judges; the right to mint coins in conformity with the law; the right to confer titles of nobility, although no privilege may ever be conferred along with them; and the right to grant civilian and military honours. The Grand Duke is responsible for representing the country abroad and for safeguarding the rights and interests of the State as well as protecting nationals vis-a-vis foreign States. To that end, he exercises the right to send and receive legations, by accrediting diplomatic representatives to Heads of State of foreign countries as well as the diplomatic representatives sent to

Luxembourg by foreign States. The Constitution confers on him the right to conclude treaties with foreign States, although no treaty may enter into effect unless it has been approved by the Chamber of Deputies.

18. The Chamber's sessions are opened and closed by the Grand Duke in person or on his behalf by an authorized representative whom he appoints for that purpose. Finally, the Grand Duke may dissolve the Chamber, although the Constitution makes his right to do so subject to the express condition that new elections must take place not later than three months after the date of dissolution. The Grand Duke may, for example, use the right of dissolution to consult the country when the political situation precludes the formation of a majority Government. The Grand Duke may send draft legislation to the Chamber for adoption, and thus has the right to propose legislation. But the Constitution also gives the Grand Duke the right to approve legislation: no law is complete until he has given his consent to it. The Constitution accords the Grand Duke a maximum time period of three months to approve legislation after the final vote in the Chamber. Failing such approval within that time frame, the provisions voted by the Chamber become null and void. Though it is true that in law the Grand Duke participates in the exercise of legislative power on an equal footing with the Chamber of Deputies, in practice the right of approval is becoming more and more of a simple formality, after having been more or less effective at various points in history.

(b) The Government

19. The text of the Constitution gives the Grand Duke complete freedom to choose the ministers who will exercise the executive power with him. In practice, however, he is considerably limited in his choice by the democratic principle which requires that members of the Government enjoy not only the confidence of the Grand Duke but also that of a majority in the Chamber of Deputies. In fact, and in accordance with tradition, the Grand Duke selects only the President of the Government, who then looks for his colleagues himself, seeking to form a Government that will gain the support of most representatives to the Chamber.

20. Members of the Government must be nationals of Luxembourg. Their functions are incompatible with those of judge, counsellor to the Court of Audit, State counsellor, deputy or communal representative. The term of office of a minister is not fixed. The reasons for resignation may be either personal, for example, when a minister is in disagreement with the President of the Government, or general, for example, when the political majority in the Chamber of Deputies is modified following new elections. The Government is made up of a President who has the title of Prime Minister and a number of members with the title of minister. It may also include members with the title of secretary of State. The current Government comprises 10 ministers and two secretaries of State.

21. Ministerial responsibility is inseparable from the immunity from responsibility of the Grand Duke. In order for any measure taken by the Grand Duke to have effect, it must be countersigned by a minister, who assumes full responsibility for it. The Constitution provides generally for the responsibility of members of Government. That responsibility is general, in

respect of acts that have a direct or indirect relation to their ministerial functions. It may also be juridical, namely penal or civil, as well as political.

22. According to the Constitution, only the Chamber has the right to bring charges against members of the Government. Accusations allowed against members of the Government for acts committed in the performance of their duties are considered by the Supreme Court of Justice in plenary. Ministers are responsible for acts that they themselves commit, either individually or collectively.

23. The Government as a whole and the ministers individually are politically responsible for their acts to the Chamber of Deputies. If the Chamber disapproves of the policy of one or more ministers or of the Government as a whole, it expresses its disagreement either by voting against a particular agenda item proposed by the Government, or by rejecting a piece of draft legislation submitted by the ministers. By voting down the annual budget, the Chamber can make it effectively impossible for a Government with which it disagrees to administer public affairs. The obligation of ministers to relinquish their duties when the Chamber brings in a vote of no confidence is implicit in their political responsibility. Normally, ministers resign after the first vote of no confidence by the Chamber.

2. The legislative power

24. The Chamber of Deputies represents the country. It shares the exercise of the legislative power with the Grand Duke. The Constitution also reserves certain powers for the Chamber in financial matters and confers on it a right to oversee the acts of the Government. Lastly, at the international level, the consent of the Chamber is necessary for any treaty to take effect on the territory of the Grand Duchy.

25. Deputies are elected by the nation. The electoral system is determined in broad outline by the Constitution and in detail by the electoral law enacted in accordance with the Constitution. The number of deputies is set by the Constitution at 60. They are elected for five years in direct elections and by secret ballot. Voting is compulsory. Deputies are elected on the basis of straightforward universal suffrage. The system of universal suffrage allows all citizens of Luxembourg, both men and women, who satisfy the conditions laid down by the law, to participate in the election of deputies. Straightforward universal suffrage, that is, without distinction as to financial situation, status or rank, guarantees all electors strict equality in respect of the exercise of their right to vote. Voting is by the list system. In each constituency, the political groups that stand for elections must draw up lists of candidates whose number may not exceed the total number of deputies to be elected in that constituency. An independent candidacy is considered as constituting a list by itself. The seats are distributed according to the rules of proportional representation and in conformity with the principle of the smallest electoral quotient.

26. To qualify, an elector must be a citizen (male or female), of Luxembourg, have completed 18 years of age, enjoy civil and political rights and be domiciled in the Grand Duchy. Entitlement to vote is established by

being recorded on the electoral register. To be eligible for election, a person must be a citizen (male or female) of Luxembourg, enjoy civil and political rights, have completed 21 years of age on the day of the election and be domiciled in the Grand Duchy. The conditions which disqualify a person from voting are the same as those which disqualify a person from standing for election.

27. Under the Constitution, a deputy's mandate is incompatible, for example, with the functions of a member of Government, a member of the State Council, a judicial magistrate, a member of the Audit Office, a district commissioner, a Government tax collector or accountant and a serving career soldier. Acceptance of the mandate is signified by taking the oath of office. Conversely, any member of the Chamber who accepts an office, a post or a responsibility that is incompatible with his mandate is automatically divested of his mandate by reason of that appointment. The personal situation of deputies and the mechanism whereby the Chamber exercises its powers are the subject of constitutional provisions designed to preserve the freedom of expression and the independence of the deputies elected by the nation and to ensure the effectiveness of the Chamber of Deputies.

28. The Constitution guarantees parliamentary immunity to deputies. No deputy may be prosecuted or arrested for any statement made within the Chamber, even if such statements constitute violations of criminal law such as insults, slander, incitement to riot, etc. This immunity is permanent. It protects the deputy during and outside sessions. It also covers former deputies in respect of any opinions expressed during the exercise of their mandate. No deputy who is guilty of a crime, an offence, or misdemeanour may be arrested or subjected to criminal prosecution for the duration of the session, without the authorization of the Chamber, except in the case of flagrante delicto. If the Chamber so demands, the arrest or prosecution of a deputy shall be suspended during the entire session. This form of immunity is not valid when the Chamber is not in session.

29. The working of the Chamber is regulated by certain provisions of the Constitution and by the rules of procedure drafted by the Chamber itself. Its meetings are public. It may not adopt a resolution unless a majority of the members is present. All resolutions must be adopted by an absolute majority of votes. In the case of a tied vote, the proposal submitted for consideration is rejected. Every year, the Chamber meets in a regular session, automatically, without a special convocation, on the second Tuesday of October, at 3.00 p.m. Sessions are opened and closed by the Grand Duke in person or by a representative appointed by him for this purpose. At the opening of each session, an interim committee is formed comprising the most senior member who acts as chairman and the two youngest members who act as secretaries. After the examination of credentials, the Chamber, by a majority of votes, appoints its permanent bureau composed of a president, three vice-presidents and five secretaries. All members of the bureau are appointed for the duration of the session. In order to facilitate and rationalize work, the rules of procedure of the Chamber provide for the establishment of a working committee and the formation of standing committees and ad hoc committees.

30. Like the Grand Duke, the Chamber has the right to introduce legislation. An initiative by the Chamber, or parliamentary initiative, is called a private bill whereas an initiative by the Grand Duke is called a Government bill. The Chamber examines and discusses Government bills and private bills which are brought before it. It adopts or rejects them by means of a vote. The procedure for drafting a bill is carefully regulated by the legislator and is circumscribed by a whole series of constitutional guarantees. No bill, whether a private bill or a Government bill, may be put to a final vote before the Council of State has given its opinion. The deputies may submit amendments during the discussion. These must be drafted in writing and submitted to the President of the Chamber. They must be seconded by at least five deputies. The Chamber is required to vote no less than four times on the same bill. The vote on the bill as a whole is always taken by roll-call. After voting on an entire bill, the Chamber is, as a rule, required to take a second decision on the same bill, within a certain period, thereby allowing it time for reflection. While it is true that the Constitution permits the Chamber to dispense with this second vote, the Council of State must then indicate its approval. In order to compensate, as it were, for the absence of a second Chamber, the Constitution thus causes the Council of State to deviate from its purely advisory role and gives it what amounts to a suspensive right of veto in the legislative procedure. The legislative work of the Chamber is completed, either with a waiver of the second vote or, after a three-month interval, with the second constitutional vote.

31. Even after a law has been finally adopted by the Chamber, the process is only complete after it has been approved by the Grand Duke. It can enter into force only after it has been promulgated and published in the Mémorial, the Official Journal of Luxembourg. Approval by the Grand Duke of any law voted by the Chamber constitutes a vital step by him in the exercise of the legislative power. The application of the law through promulgation and publication forms an essential part of the exercise of the executive power. In practice, the Grand Duke approves and promulgates the law by appending his signature to the text of the law which contains the wording concerning promulgation. In this case, therefore, by means of the same signature, he exercises both the legislative and executive powers.

32. The Constitution has reserved for the Chamber, as the organ of legislative power, various means of action vis-à-vis the Government, as the organ of executive power. Control by the Chamber is exercised in financial matters as well as in political and administrative matters. In respect of financial matters, the Chamber exercises control over the Government through the annual vote on the budget and taxes, the right to draw up the State's accounts each year and a certain measure of supervision of the administration of public property of the State. The Constitution vests the legislative authority with the power to grant or refuse the Government the authorization to collect revenue and to incur expenditure. This authorization is usually expressed through the annual vote on the budget. The budget is prepared in the form of a law and according to the rules laid down for the legislative procedure to be followed in case of a government initiative. The right of the Chamber to draw up the State's accounts is the corollary to its right to vote on the budget. Apart from the annual control of the current financial administration of the State, the Constitution reserves for the legislative power a number of decisions which go beyond the framework of the normal

administration of the public property of the State. Taxes may only be introduced by means of a law. The budget law contains an authorization to levy regular taxes. Extraordinary taxes must be authorized by a special law. The Chamber's control over government business is not limited to financial matters but also takes the form of powers of supervision granted to it by the Constitution and by certain special laws on political and administrative matters.

33. The Chamber may request the members of the Government to attend its public meetings. It has the right to ask them questions and to put formal questions on issues of public interest. A question does not call for a general discussion and does not give rise to a vote by the Chamber. Formal questions are settled by a public debate and, if necessary, a vote may be taken by the Chamber on a particular agenda item. Every deputy has the right to table motions. Motions are discussed and voted on by the Chamber, if they are seconded by at least five deputies. They may be on many different subjects. For example, they may cause the Chamber to take a decision on a specific government action, call upon the Government to take certain actions, censure, indicate approval, express confidence in or withdraw it from the Government, etc. The confidence of the Chamber may be withdrawn from the Government either by a vote of no confidence or by a negative vote on any provision under discussion, on the subject of which the Government had asked for a vote of confidence. A decision taken by the Chamber, against the expressly formulated wish of the Government, puts the latter in a minority position and forces it to resign.

34. The Chamber has the right of investigation. It may hear witnesses and appoint experts to form an opinion on certain doubtful cases which are submitted for its consideration. The petitions addressed to the Chamber are examined in the Commission on Petitions which submits a report on them within a fortnight. The members of the Government are obliged to provide explanations on the content of these petitions whenever the Chamber so requests. Lastly, the Chamber has the right to bring charges against members of the Government concerning acts related to the performance of their duties. Charges against ministers which are admitted by the Chamber are brought before the Supreme Court of Justice, in plenary.

3. The judicial power

35. The Constitution vests the exercise of judicial power in the courts and tribunals. It extends to them the principle of the separation of powers by enabling them to operate independently, restricting their scope, determining their jurisdiction and by laying down a range of procedural guarantees. The organs of the judicial power are responsible for pronouncing on disputes concerning individuals, property and civil liberties. So as to ensure the fullest possible independence, the Constitution has decreed a range of provisions designed to make judges independent from litigants, and from executive and legislative bodies. Judges may not be removed from office. They may only be suspended or dismissed by decision of the Supreme Court of Justice, pursuant to an application from the public prosecutor. Judges may not be transferred without their agreement. The decision to retire judges is taken by the Supreme Court of Justice.

36. Magistrates occupy the first rung of the judicial ladder. Their jurisdiction only extends to such matters as are specified by law, in civil, commercial and criminal cases.

37. The circuit courts hear civil, commercial and criminal cases. Their decisions may only be taken by a fixed number of three judges, including the president. Hearings are held in the principal towns of each district. In civil and commercial matters, the circuit court's jurisdiction covers all cases except those which the law has specifically assigned to other courts.

38. In criminal matters, the correctional court tries minor offences, i.e. offences which under the Penal Code or special laws carry a minimum sentence of eight days and a maximum of five years and a fine of over 2,500 francs, which may be separate or cumulative.

39. Crimes, i.e. offences for which the Penal Code or special laws lay down a sentence of hard labour for life or for a determined period, or rigorous or ordinary imprisonment, come under the jurisdiction of the criminal division of the circuit courts, subsequent to the abolition of the Court of Assize by a 1987 Law.

40. The circuit court hears appeals against decisions handed down in the first instance by the magistrates, with the exception of final decisions handed down by them in cases involving amounts below a certain level.

41. The Constitution also vests in the courts jurisdiction in disputes involving political rights, i.e. the rights to which citizens are entitled in their relations with the State. In the narrow sense, these rights include the right to take part in affairs of State, such as, for example, the right to vote, the right to stand for election and the right to be appointed to public office. In a broader sense, disputes involving political rights are those in which individuals are opposed to the administration or those that oppose different government departments.

42. However, the Constitution allows the legislator to provide for exceptions to the general jurisdiction of the ordinary courts. These constitutional powers have to a large extent made it possible to withdraw administrative litigation from the jurisdiction of the organs of the judicial power and to vest it, by means of special laws, in administrative courts such as the Council of State's Litigation Committee, the Audit Office, the Pensions Commission, the Arbitration Board and the Social Security Board, etc. Under Luxembourg law, administrative courts are distinguished by the fact that their jurisdiction, in principle, only covers matters over which they have been given specific statutory jurisdiction.

43. The Supreme Court of Justice sits in Luxembourg. It is composed of a Court of Cassation and a Court of Appeal. The Court of Appeal is subdivided into 10 divisions on each of which three judges sit. The Court of Appeal deals with decisions given at first instance by circuit courts. The Court of Cassation consists of one division with five judges, who are the President of the Court, two judges of the Court of Cassation and two judges chosen from among the judges of the Court of Appeal who have not previously dealt with the case being heard. It deals fundamentally with decisions taken by the Court of

Appeal, the Military Court, and decisions given at last instance by circuit courts and magistrates courts. Decisions and judgements may only be submitted to the Court of Cassation on the grounds that they constitute a breach of the law, an abuse of authority or for error of form which constitutes either an infringement of an essential procedural requirement or grounds for nullity. The Court, sitting in full session, also hears charges declared admissible by the Chamber of Deputies against members of the Government, cases involving conflicts of competence and disciplinary cases against judges.

44. Court hearings must be public, unless a public hearing is likely to jeopardize public order. In such cases, the court may exceptionally exclude the public, in a substantiated judgement handed down in the usual form. All judgements must be delivered in a public hearing, even if the trial itself has been in camera. All courts are required to substantiate their judgements. The institution of judicial remedies, whereby an appeal may be made against a decision of a lower court before a higher court, provides citizens with additional safeguards of equity.

45. Last, we should mention the jurisdiction of the European Commission of Human Rights of the Council of Europe which receives individual appeals in certain conditions, which include the requirement that domestic remedies must have been exhausted, and the jurisdiction of the Court of Justice of the European Communities, which is also subject to a number of conditions, and which extends to cases defined by current community law.

B. The communes

46. The representativeness of political parties in the Chamber of Deputies is not necessarily reflected in the communes. In Luxembourg, where there are neither provinces nor departments, the commune is the only expression of the principle of territorial decentralization. From the administrative angle, the commune is an autonomous community on a particular territory having legal personality. It manages its property and interests through local representatives, under the supervision of the central authorities.

47. In accordance with the Constitution, each commune has a communal council directly elected by those inhabitants who qualify as voters. The communal council represents the commune and its role, relatively speaking, is comparable to that of the Chamber of Deputies within the State. A person's domicile is recorded on the electoral register. In order to be elected as a communal councillor it is necessary to be a citizen of Luxembourg or a national of another member State of the European Union; to enjoy civil rights and not to have forfeited the right to stand for election either in the member State of residence or in the member State of origin; this latter objection cannot be applied to non-Luxembourg citizens of the European Union who have lost the right to stand for election in their country of origin on account of their residence outside their member State of origin; to be 21 years old on the date of the election and to have regularly resided for over six months in the commune or section. The Grand Duke may dissolve the communal council. When he does so, an election is held not later than three months after the dissolution.

48. Communal councillors are elected every six years by two different forms of ballot: by a majority ballot in communes with less than 3,000 inhabitants (an individual vote with no lists of parties or groups) or by a proportional ballot in communes with over 3,000 inhabitants (a vote for lists of parties or groups). Of the 118 communes, 96 currently vote by the majority ballot and 22 in a proportional ballot.

49. Communal authority is exercised by the communal council, the board of burgomasters and aldermen or the burgomaster alone. Relationships between these two bodies are comparable to those between the organs of the legislative power and executive power in the State. The communal council has jurisdiction over all matters of interest to the commune, i.e., in particular the commune's internal administration, communal property, income, expenditure, works, the commune's public bodies, the appointment of the secretary to the commune, its collector of taxes and communal employees. The law determines the commune's participation in education. It also vests in the communal council responsibility for issuing communal regulations and by-laws which are enforced by penalties These regulations may under no circumstances contravene general law or administrative regulations.

50. The burgomaster presides over the meetings of the communal council - which must be public - and steers the debates. If he is unable to do so, he appoints an alderman to replace him. Failing this, he is replaced by the aldermen, and then by the councillors, in order of seniority. The council may take decisions only if a majority of its members is present.

51. The board of burgomasters and aldermen, whose members must be chosen from among the communal councillors, is responsible for the day-to-day running and management of the commune. At the communal level, it corresponds to what the Government is for the State. It performs not only purely communal functions, but also operates in certain cases as an organ of the central Government. Burgomasters are appointed and removed by the Grand Duke. Urban aldermen are appointed by the Grand Duke and aldermen in other communes by the Minister of the Interior. The board of burgomasters and aldermen meets on the days and at the time set by communal rules of procedure and in all cases as often as the prompt dispatch of business requires. It is presided over by the burgomaster or in his absence by the alderman next in rank. Its meetings are not public.

52. The board of aldermen, in its capacity as an organ of the central Government, is responsible for enforcing governmental laws and decisions on the territory of the commune. The burgomaster is responsible for the enforcement of public order statutes and regulations under the supervision of the district commissioner. Responsibility for the judicial police is specifically vested in the burgomaster who may delegate his authority to a member of the board of aldermen, subject to the approval of the Government Procurator. Civil status documents and the civil registry are the sole responsibility of the communal authorities. The burgomaster or an alderman appointed by him acts as registrar.

53. The board of burgomasters and aldermen, in its capacity as an organ of communal authority, is responsible for publishing and enforcing the decisions of the communal council, for the administration of communal property, the

management of income, the regulation of expenditure, the supervision of communal funds and accounts, the administration of communal bodies, for policing in rural areas, the management of communal works, for any judicial steps taken by the commune, for keeping archives, etc.

54. To meet their expenditure, communes receive income from their property as well as revenue from communal taxes and rates. They also receive non-earmarked funds and specific subsidies from the State. When they face heavy extraordinary expenditure, they may also contract loans. No communal tax or rate may be introduced without the consent of the communal council. In addition, no communal tax may be introduced without the approval of the Grand Duke. The right vested by the Constitution in the commune's representative bodies to deal themselves with matters of exclusively local interest allows them considerable autonomy in the form of communal authority, local representation and legal personality. As the commune is a juridical person under public law, it owns and manages its own property, and may acquire rights and take on obligations and also plead before the courts.

55. Each administrative district has a district commissioner, appointed by the Grand Duke. Commissioners are State officials under the direct authority of the Minister of the Interior in particular and of the Government in general. Their function is to act as official intermediaries between the central Government and the communal administrations. All communal administrations, with the exception of the town of Luxembourg, come under their immediate authority and may only communicate with the higher authority through them, except in serious and exceptional circumstances. Supervision of communal management is regulated by statute, and certain acts of communal bodies may have to be submitted for approval to the supervisory authority and even be annulled or suspended if they are unlawful or incompatible with the public interest, without prejudice to the responsibilities of the judicial or administrative courts. If an act by a communal authority is annulled or rejected by the Grand Duke, the Minister of the Interior or any other competent authority, the commune may appeal to the Council of State's Litigation Committee for the measure to be quashed.

III. ECONOMIC, SOCIAL AND CULTURAL FEATURES

A. Economic features

56. The economic and social policies applied by nearly all Governments since the Second World War have aimed at blending political and economic ideologies judiciously, with a view to enabling the nation's productive sector to develop while ensuring that the national product is distributed equitably among all sectors of the population.

57. According to the OECD Economic Surveys for 1995: "The Luxembourg economy has recovered rapidly from the shallow down-turn of 1992-93, in line with developments in surrounding countries. A small and very open economy like Luxembourg was bound to be affected significantly by changes in international demand conditions and, more specifically, the conjunctural situation in Europe. The steel industry underwent a deep recession which is ending only now, and total exports actually declined in 1993 before rebounding

markedly last year to lead the economic upturn. ... The overall position of public finance has remained quite strong and compares extremely well with that of other European countries.

58. For the year 1994, according to the European system of integrated economic accounts (ESA), the gross national product at market prices was Lux F 517 billion. For the same period, the State budgetary year finished with a surplus of Lux F 493 million, for a total income of Lux F 145 billion. The cumulative budgetary surplus was Lux F 1.1 billion at the end of 1994. The considered national debt rose from Lux F 10.5 billion in 1993 to Lux F 11.2 billion in 1994. With a gross domestic product of approximately ECU 31,000 per capita, the Grand Duchy currently ranks first within the European Community.

59. Industrial output (manufacturing and construction industries) in 1994 accounted for 23 per cent of GDP (of which 3.5 per cent was for iron and steel production). The services sector (commercial and non-commercial) accounted for 75 per cent of GDP. These figures suffice to show the gradual growth of the tertiary sector in the economy. During the period 1987-1994, the volume of average annual growth was 4.2 per cent, equivalent to an increase of 28 per cent in the national real income over six years. As for trends in prices, it should be noted that prices increased by 2.4 per cent in 1994.

60. As regards the external trade balance, for more than 15 years it has been negative; this is attributable to the following structural factors: the growing energy costs, the tripling of household consumption during the period and the intensification of investment expenditure. The deficit is nevertheless amply offset by the surplus balance of trade in services and income from production factors. During the year 1994, for example, the current account showed a surplus of Lux F 64 billion.

61. This satisfactory economic situation was maintained, in the first instance, only by far-reaching adjustments dictated by changes in the size and structure of domestic demand and, more importantly, foreign demand. The second contributory factor is the importance attached to the parallel development of social measures: the equitable redistribution of national income and the social peace it guarantees are the primary generators of improvements in productivity in enterprises and consequently constitute one of the key advantages, comparatively speaking, of the national economy.

B. Social features

62. Social progress implies the existence of efficient public services in areas such as education, health and social welfare, as well as the expansion and modernization of the infrastructure required for such services. Social peace is also, and perhaps primarily, assured by the creation of new jobs with adequate remuneration. In this regard, let us recall that the number of wage-earners went from 112,600 in 1970 to 192,000 in 1994. Of these, 33,200 were employed in the industrial sector, 132,800 in the services sector and 22,800 in construction. The number of non-wage-earners is declining slowly but regularly, from 27,600 in 1970 to 16,100 in 1994. It should also

be stressed that the State, with 15,223 employees, remains the primary employer in Luxembourg, followed by the iron and steel company ARBED, which currently has 7,340 employees.

63. The economic growth of recent years could not have been achieved without an increase in the number of wage-earners. Three phenomena contributed significantly to meet the requirements of a steadily expanding job market. First, the number of cross-border workers rose from 13,400 in 1980 to some 51,300 in 1994. Second, the proportion of women gainfully employed went from 23 per cent in 1970 to 37 per cent in 1994. In some sectors, such as credit institutions, women now represent nearly 50 per cent of the total workforce. Finally, it should be recalled that part-time work was expanded, with a concomitant increase in the number of jobs.

64. In 1993, the unemployment rate exceeded 2 per cent for the first time. In 1994 it rose to 2.7 per cent. It is becoming increasingly apparent that the rise in unemployment is not a macro-economic problem, since job opportunities are numerous and constantly increasing. The majority of the new jobs created have been taken by cross-border workers. Thus the number of wage-earners rose by 4,850 in 1994 and the number of cross-border workers by 400. In the same period the number of job-seekers (residents) rose by 1,100. In the early 1990s, wages increased rapidly on account of the institutionalized system of wage indexing and the linkage of the minimum wage to the mean rate of pay increase in the economy. This trend had repercussions on the competitivess of the Luxembourg economy, and in 1994 the Government adopted measures to safeguard employment, price stability and the competitiveness of enterprises. In industry, for example, wages and salaries fell by 2 per cent between 1993 and 1994.

65. One factor that contributes in no small measure to the maintenance of social peace in Luxembourg deserves to be mentioned here on account of its originality. The "tripartite" as it is commonly called, or the Tripartite Coordination Committee to give it its official name, is a forum for consultations among social partners in order to find negotiated solutions to social problems before work stoppage occurs. Established by the Act of 24 December 1977 and comprising four members of the Government (the Prime Minister and the Ministers of the Economy, Finance and Labour) and eight representatives of professional organizations of employers and workers, the Committee meets under the chairmanship of the Prime Minister. It issues an opinion prior to the adoption of any measures triggered when any of the three levels identified in the Act of 1977 is reached (1,500 unemployed, 2,500 unemployed, acute crisis).

66. Finally, concerning the social security system, reference should be made to the OECD study, according to which "... Luxembourg boasts a well-developed system of social protection dating back to the beginning of the century. While it has evolved to a substantial extent over the years, primarily through the extension of the range of benefits and inclusion of all demographic sectors, it is well-structured, transparent and, although generous, for the most part affordable, at least over the medium term. It is based to an important extent on the principle of solidarity between socio-economic groups

and workers and the retired. Such solidarity is achieved through an equalization of many benefits, a community of risks and a de facto indexation of benefits to changes in real wages and salaries."

67. "The system is also marked by several distinguishing characteristics. The most important of these is the partially-funded nature of the pension system: a surplus of some 2 per cent of GDP is accumulated each year in order to keep reserves at an actuarially sound level. Second, the public old-age pension system is remarkably generous. A third noteworthy trait is the diminutive significance of the unemployment-insurance system, resulting, not surprisingly, from the lack of any appreciable level of unemployment. The unique combination of a small population and a central location has allowed 'cross-border' or 'frontier' workers to play an especially important buffering role in the domestic labour market. This, along with a history of periodic episodes of substantial immigration, has implied that the number of contributors to the system is relatively independent of purely domestic demographic factors, and that, while a substantial portion (nearly one quarter) of all pensions are paid to non-residents, there has been none the less a substantial transfer from non-residents to the Luxembourg treasury. Fourth, Luxembourg has recently introduced a variety of new and innovative family-allowance benefits: a minimum-guaranteed-income scheme in 1986 and a payment to mothers of children under two who stay at home or work at low-paying jobs in 1989, for example. A fifth and final feature which is somewhat unusual is the steady increase over the longer term in budgetary transfers both in relation to total financing of social security as well as to GDP. This has been made possible by the overall healthy state of Luxembourg's economy and its history of prudent fiscal policy."

C. Cultural life

68. To conclude this chapter, we shall look at several features of national culture. The Government's cultural policy is based upon a very broad definition of the concept of culture: of course this includes art in all its forms, but also an attitude of respect for other people's values. The practice of culture open to all is a bulwark against all kinds of fanaticism and a safeguard for the democratic values of Luxembourg's multiculutral society. The Government sees itself as responsible for national cultural identity: it attaches great importance to Luxembourg's language and literature. It gives prominence to buildings that form part of the cultural heritage, whether religious, rural, feudal or industrial. Here the restoration of several parts of the fortress is worth noting. This work has contributed to the inclusion of some parts of the old town and the fortress on UNESCO's World Heritage List. Moreover, the Government sets out to stimulate contemporary creative activity and pays special attention to regional balance in the field of cultural activities and facilities.

69. The principal reforms being undertaken include the new national museum of natural history to be housed in the former women's prison; the conversion of Neumürster Abbey into a centre for cultural activities, the planned museum of contemporary art (it should be noted that the former casino, now a forum of contemporary art, will continue the policy of creating awareness of art that it began in the year of culture 1995); the construction of a large concert

hall; the setting-up of a fund for the creation of collections; a five-year regional cultural development plan that includes an inventory of the country's cultural infrastructure; the establishment of a network of regional cultural facilities; extension of the national audiovisual centre; support for provincial cinemas; draft legislation on providing assistance to independent professional artists; draft legislation on standardizing the teaching of music; establishment of a cultural promotion agency to encourage contemporary creative activities; draft legislation authorizing the Government to participate in the Henri Pensis Foundation, which is responsible for the management of the Luxembourg Philharmonic Orchestra. The year of culture put Luxembourg on the international cultural map and enabled culture to become firmly rooted in the habits of the country's citizens. The cultural events organized on the occasion of "Luxembourg, European city of culture 1995" mostly formed part of a general pattern of cultural events that will continue for years to come.

70. While the nation is one of the smallest numerically in this part of Europe, the fact remains that its history, at times very difficult, and its location at the crossroads of two great cultural entities - France and Germany - have given it an identity of its own. Its language, Luxemburgish, remains he most tangible expression of that identity. By the Act of 24 February 1984, Luxemburgish was officially declared the national language. Every pupil in Luxembourg learns German from the first year of primary school education (at the age of six) and French from the second year. The whole educational system in Luxembourg is based on this bilingual approach. In educational curricula, the weight of Luxemburgish is limited, but in daily life it plays a very important role: Luxemburgish is the lingua franca of the entire nation. Against this background, it will be understood that the trilingualism dear to the citizens of Luxembourg filters through to literary creation: some authors are even able to express themselves well in the three languages. As Luxemburgish is spoken and sometimes written beyond the borders of the Grand Duchy, its place in a "Europe of the regions" is assured.

71. Confined within a small area, Luxembourg's specificity in the plastic arts has always been directly influenced by dominant trends in neighbouring countries at any given period. Owing to the assimulative capacities of the people of Luxembourg, all trends in the contemporary arts, together with the contributions of European and non-European peoples, have gradually enriched the work of its artists. Strengthened by this heritage, the arts of Luxembourg will certainly carve out a place in the cultural Europe of tomorrow. At present, the rapidly growing national art market can call on an increasingly discerning public and ever closer ties with the international art scene. The year of culture is sure to have an impact in this respect. It is hardly surprising, therefore, that the authorities, aware of this rapid evolution, are giving increasing attention to cultural activities.

72. Cultural life is animated by various entities, from private individuals to national federations, with, in between, local cultural and sports associations, associations of local societies, tourism offices and numerous communal cultural groups. The range of activities offered is constantly expanding. While the capital looms large in the cultural field compared with

other urban areas (thanks to its museums, cinemas, theatres, concert and lecture halls and libraries), the latter should not be thought to be lacking in cultural activities. There are many theatrical and musical associations, choral groups, ballet and dance groups, national socio-cultural associations as well as those of foreign origin, sports clubs and political associations established throughout the country. Annual cultural events of a high standard are organized. Examples are the Wiltz, Marnach, Echternach and Syrdall festivals, which offer concerts of classical and modern music, the cultural activities at Bourglinster Castle organized by the "Friends of the Castle", and the activities of the very dynamic municipal theatre and "Kulturfabrik" at Esch-sur-Alzette.

73. Many components of the country's architectual heritage, historical sites and monuments deserve special protection. Aside from the capital, all parts of the country with their rural, feudal, religious and industrial heritage are the beneficiaries of special protection measures. On the legislative front, mention should be made of the scope of the Act of 18 July 1983 on national sites and monuments. The Act provides for the protection of all buildings which a classification procedure deems to be of public interest for their archeological, historical, artistic, aesthetic, scientific, technical or industrial features.

74. In the area of public scientific research, an important step was taken with the adoption on 9 March 1987 of the Act providing for the establishment of public research centres. The specific intention is to organize technological research and development in the public sector and to promote the transfer of technology and scientific and technological cooperation among private enterprises and the public sector. A Centre for Population, Poverty and Socio-economic Policy Studies (CEPS) has been set up as a public establishment of the Ministry of State.

IV. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

75. Any dispute that originates in a human rights violation listed in national legislation or in one of the international covenants or conventions to which Luxembourg is a party may be brought before the national courts. The subject of the dispute determines the competent tribunal. The formal context guaranteeing respect for human rights and fundamental freedoms, in other words, the working of the judicial system of Luxembourg, has been discussed at length earlier in the section on national courts and tribunals. We shall therefore not revert to it at this juncture.

A. Main constitutional guarantees of human rights and fundamental freedoms

76. The Constitution of Luxembourg, which is a written Constitution formulated in strict terms, guarantees the rights of citizens. The relatively large number of articles in the Constitution devoted to the rights and freedoms of citizens of Luxembourg indicates the importance attached, in the organization of the State, to the free development of the individual and his

protection vis-à-vis those in authority. This is especially significant as in Luxembourg the Constitution prevails over any other national rule of law. In the event of conflict, therefore, the Constitution sets aside any incompatible national rule.

77. Specifically, the Constitution in force guarantees 15 rights to all citizens and, in principle, to all aliens residing on the territory of the Grand Duchy.

1. Equality before the law;

2. Individual freedom;

3. Inviolability of the domicile;

4. Inviolability of property;

5. Freedom of opinion;

6. Freedom of the press;

7. Inviolability of correspondence;

8. Right of petition;

9. Freedom of worship;

10. Freedom of assembly;

11. Freedom of association;

12. Right to public education;

13. Right to institute proceedings against public officials;

14. Right to employment and social security;

15. Freedom of trade and industry.

78. Further, every citizen is entitled to forbid anyone access to his residence. No residence may be searched except in the cases established by law and in the forms prescribed by it. Freedom of opinion and freedom of the press are guaranteed, except for certain excesses, for example, encouragement to commit crimes or offences or an attack on a person's honour or on the reputation of others.

79. The Constitution guarantees freedom of worship and that of public worship, as well as the freedom to manifest one's religious opinions. It also guarantees freedom of conscience by stating that no one may be compelled to assist in any way in the acts and ceremonies of a religion, or to observe its

days of rest. Primary education is compulsory and free of charge. The Constitution makes it obligatory for the State to set up free secondary education establishments and the requisite higher education programmes.

80. Finally, the Constitution does not merely protect paid work and trade union freedoms, but generally safeguards all occupations, trade, industry, the liberal professions and agricultural work. It also compels the lawgiver to organize social security, health protection and workers' time off.

81. Since the Constitution may be revised only by a very strict procedure (dissolution and the convening of a new Chamber, vote by a two-thirds majority), the guarantees it confers in the field of human rights are sufficiently protected.

B. Scope of treaties, covenants and protocols

82. International instruments (see annex) are self-executing and do not require implementing regulations, unless their terms expressly state the contrary. Consequently, they create directly rights and obligations for the subjects of national sovereignty and may, without any other action, be implemented by national administrative and law courts. Disregard of them by a national court opens the way for an appeal.

83. With respect to the relations between international law and national law, it is an established supereminent principle that international law has priority over national law, in other words, international treaties take precedence over laws and all other provisions of national law. However, prior to the conclusion of international treaties, every effort is made to ascertain whether their substance is in conformity with existing domestic law. If that is not the case, internal legislation is adopted prior to any ratification of the treaty. The provisions of the Constitution ensure that the internal implementation of treaties is equated with the implementation of laws. Implementation measures are based on the provisions of the treaty. The treaty prevails over national law, even a subsequent law, because the treaty has a more elevated origin than the will of an internal organ. Specifically, therefore, the covenants of concern to us form part of the positive law of Luxembourg with effect from the time of their ratification.

C. Judicial sanction

84. In the State of Luxembourg, no one may be prosecuted save in the cases provided by law and following the form prescribed by it. No one may be arrested, apart from in cases of flagrante delicto, except by a substantiated court order which must be served at the time of the arrest or within the following 24 hours. The law determines in advance which court will be competent to hear cases of civil disputes or criminal offence, either by reason of the residence of the parties or the acts to be tried. No one may be taken, against his will, from the court which the law has thus assigned to him. No penalty may be admitted or applied except under the law.

V. INFORMATION AND PUBLICITY GIVEN TO THE COVENANTS AND REPORTS

85. Article 112 of the Convention states that no statutory provision is binding unless it has been published in the form determined by law. This provision applies a fortiori to treaties which are also promulgated by an enacting law. Laws are published in the Official Journal of the State, the Mémorial. A law is obligatory three days after the date of its publication in the Mémorial, unless it sets a different time-limit. As soon as the law is published, all citizens are presumed to be informed of it by virtue of the principle that "ignorance of the law is no excuse".

86. The Ministry of Foreign Affairs of Luxembourg regularly informs the public of the submission of periodic reports, mainly through press releases issued to all the media. Persons interested are thus invited to contact the Ministry of Foreign Affairs and obtain the report in question. The Ministry of Foreign Affairs sends a copy directly to interested non-governmental organizations.

ANNEX

International treaties, conventions, covenants and protocols forming part of the internal law of Luxembourg

1. Law of 29 August 1953 enacting the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, and of the Additional Protocol, signed at Paris on 20 March 1952;

2. Law of 25 June 1965 enacting:

Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions;

Protocol No. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, amending articles 29, 30 and 34 of the Convention;

3. Law of 6 March 1968 enacting Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the Protocol No. 1 thereto;

4. Law of 6 March 1968 enacting Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Strasbourg on 20 November 1966;

5. Law of 27 February 1989 enacting Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Strasbourg on 22 November 1984;

6. Law of 1 December 1977 enacting the International Convention on the Elimination of All Forms of Racial Discrimination, done at New York on 7 March 1966;

7. Law of 9 August 1980 enacting implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and supplementing the Penal Code by new articles 454 and 455;

8. Law of 6 June 1981 enacting the Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature on 9 December 1948, in Paris;

9. Law of 3 June 1983 enacting:

The International Covenant on Economic, Social and Cultural Rights;

The International Covenant on Civil and Political Rights;

The Optional Protocol to the International Covenant on Civil and Political Rights, signed at New York on 19 December 1966;

10. Law of 31 July 1987 enacting the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed at Strasbourg on 26 November 1987;

11. Law of 15 December 1988 enacting the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York on 18 December 1970.